

### **REMARKS**

1. In this response to the final Office Action mailed January 30, 2008, Applicants respectfully request reconsideration. Claims 39-73 were last presented in the application. In the outstanding Office Action, all claims have been rejected. By the foregoing amendments, claims 39-42, 45-51, 53-58, 61, 62, 64, 66 and 68-69 have been amended, claims 70-73 claims have been canceled, and no claims have been added. Thus, upon entry of this paper, claims 39-69 will remain pending in this application. Of these 31 (thirty-one) claims, 2 claims (claims 39 and 55) are independent.

2. Based on the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

#### ***Election/Restrictions***

3. Applicants affirm the provisional election of Group I, claims 39-69, without traverse, which was made during the January 14, 2008 telephone conversation between Applicants' representative and the Examiner.

4. Applicants have cancelled the claims directed to the subject matter of non-elected Group II, namely claims 70-73.

#### ***Claim Amendments***

5. By the foregoing Amendments, Applicants have amended the claims to make the claims more readable. Applicants submit that the above Amendments do not narrow the scope of the claims. Applicants further submit that no new matter has been added.

#### ***Claim Rejections under 35 U.S.C. § 112, Second Paragraph***

6. The Examiner has rejected claim 41 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner asserts that the claim limitation "wherein first region" is unclear. Applicants thank the Examiner for suggesting that claim 41 be amended to recite "wherein said first region." Applicants have amended claim 41 as suggested by the Examiner to replace "wherein first region" with "wherein said first region." Therefore, Applicants respectfully request that the rejection of claim 41 under

§ 112, second paragraph be reconsidered, and that it be withdrawn.

7. The Examiner has rejected claim 51 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner asserts that claim 51 is indefinite because it is unclear whether the “electronics” recited in claim 51 refer to electronics located in the external component or to implanted electronics. Applicants have amended claim 51 to recite “stimulator electronics.” Applicants assert that it is now clear to which electronics claim 51 refers. As such, Applicants respectfully request that the rejection of claim 51 under § 112, second paragraph, be reconsidered, and that it be withdrawn.

***Claim Rejections under 35 U.S.C. § 102***

8. The Examiner has rejected claims 39, 41, 43-49, 55, 57, 59, 62, and 64 under 35 U.S.C. § 102(c) as being anticipated by U.S. Patent No. 6,648,914 to Berrang *et al.*, (hereinafter, “Berrang”). Applicants respectfully traverse this rejection.

9. Berrang is directed to a cochlear prosthesis have an implantable housing which comprises two sections. (*See*, Berrang, Abstract; col. 3, Ins. 33-44.) Each section has a thin, rounded shape, and the two sections “are joined by a pliable (or bendable) bridge to allow the surgeon to bend said bridge so as to better fit the two housing sections to the curve surface of the skull.” (*See*, Berrang, col. 3, Ins. 33-44.) More specifically, the pliable bridge is a pliable metal (such as gold or platinum) which may adopt a bent shape during insertion of the housing into the recipient. (*See*, Berrang, col. 9, Ins. 60-67.) Once implanted, the thin sections of the housing lies substantially against the skull bone, with little or no excavation underlying bone. (*See*, Berrang, col. 10, Ins. 1-18.)

***Claim 39***

10. In the outstanding Office Action, the Examiner asserts that the above described cochlear implant of Berrang is analogous to Applicants’ claimed invention as recited in claim 39 because “due to the flexible nature of the electrode array and the pliable bridge connecting the two portions of the housing together the housing is capable of rotating about an axis that is substantially aligned with a longitudinal axis of the electrode array when the patient’s head grows.” (*See*, Office Action, pgs. 4-5.) The Examiner notes that

because “the claim does not mention how much the housing must be rotatable about the axis,” a small possible rotation “when the patient’s head grows fulfills the limitations of the claims.” (See, Office Action, pgs. 4-5.)

11. As shown above, Applicants have amended independent claims 39 to recite, among other things, that “said housing and said first region [of an electrode assembly] are configured such that following implantation of said second region into the cochlea, said housing is rotatable between first and second implant orientations about said axis of rotation of said housing such that said second region implanted in the cochlea remains substantially stationary during said rotation *and the locations of said receiver electronics are different in the first and second implant orientations.*” Applicants assert that Berrang does not teach or suggest an implantable device which is “rotatable between first and second implant orientations” and in which “the locations of said receiver electronics are different in the first and second implant orientations” as recited in claim 39, above. Rather, in Berrang, only small rotations resulting from the growth of the skull are permitted. (See, Berrang, col. 9, lns. 56- col. 11, ln. 33.) After such small rotations, the housing of Berrang, and any electronics therein, remain in the same location relative to the ear of the recipient. (See, Berrang, col. 9, lns. 56- col. 11, ln. 33.)

12. For at least these reasons, Applicants respectfully assert that Berrang fails to anticipate or render obvious all elements of Applicants’ claim 39. Applicants further assert that the other art of record fails to teach or suggest that which is missing from Berrang. Therefore, Applicants respectfully request that the rejection of claim 39 under 35 U.S.C. §102 be reconsidered, and that it be withdrawn.

### ***Claim 55***

13. Claim 55 is directed to a “cochlear implant system comprising... an implantable housing having... a receiver coil attached to said housing... wherein said housing... is rotatable between first and second implant orientations about said axis of rotation of said housing and such that said second region implanted in the cochlea remains substantially stationary during said rotation and the locations of the receiver coil are different in the first and second implant orientations.” For at least the reasons discussed above with reference to claim 39, Applicants assert that Berrang fails to anticipate or render obvious at least these elements of claim 55. Applicants further assert that the other art of record fails to

teach or suggest that which is missing from Berrang. Therefore, for at least these reasons, Applicants assert that claim 55 is patentable over Berrang.

***Claim Rejections under 35 U.S.C. § 103***

14. The Examiner has rejected claims 42 and 58 under 35 U.S.C. §103 as being unpatentable over Berrang. Similarly, the Examiner has rejected claims 40, 50-51, 52-54, 56, 63, 65-66, and 67-69 under 35 U.S.C. §103 as being unpatentable over Berrang in view of various other references, namely U.S. Patent No. 6,272,382 to Faltys *et al.*, (hereinafter, "Faltys") and U.S. Patent No. 6,205,360 to Carter *et al.*, (hereinafter, "Carter").

15. Without addressing the apparent lack of motivation to combine the cited references, Applicants assert that these rejections under 35 U.S.C. §103 are improper because the proposed combinations fail to teach or suggest all elements of the above claims. As described above with reference to claim 39, Berrang fails to teach or suggest that which is asserted by the Examiner. Applicants assert that neither Faltys nor Carter teach or suggest that which is missing from Berrang. Therefore, for at least these reasons, Applicants respectfully request that the rejections under 35 U.S.C. §103 be reconsidered, and that they be withdrawn.

***Dependent Claims***

16. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

***Conclusion***

17. Applicants respectfully request entry of the claim amendments, as the claim amendments are believed to place the application in condition for allowance. A notice to his effect is respectfully requested. In the event that Examiner disagrees with Applicants, Applicants respectfully requests a telephone interview with the Examiner to discuss and possibly resolve the issues.

18. Applicants make no admissions by not addressing any outstanding rejections or basis of rejections. Furthermore, Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Thus, cancellations and amendments of above claims, are not to be construed as an admission regarding the patentability of any claims.

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Respectfully submitted,

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